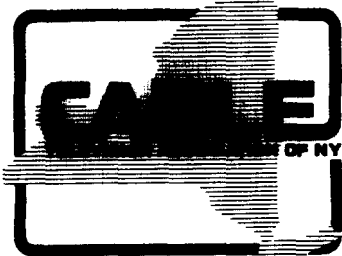


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Charles B. Stockdale
Counsel

September 29, 1993

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Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

By UPS Next Day
Air Service

Re: MM Docket 92-266; FCC No. 93-428; Third Notice of Proposed
Rule Making

Dear Sirs and Madams:

Enclosed please find an original and nine copies of comments
hereby submitted in response to the proposed rulemaking noted
above.

Very truly yours,

Charles B. Stockdale

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Implementation of Sections of
the Cable Television Consumer
Protection and Competition Act
of 1992

Rate Regulation

MM Docket 92-266
FCC No. 93-428

COMMENTS OF THE
CABLE TELEVISION ASSOCIATION OF NEW YORK, INC.,
THE THIRD NOTICE OF PROPOSED RULE MAKING

Richard F. Alteri
President

Charles B. Stockdale
Counsel

Cable Television Association of
New York, Inc.
126 State Street
Albany, NY 12207
(518) 463-6676

Date: September 29, 1993

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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of

Implementation of Sections of
the Cable Television Consumer
Protection and Competition Act
of 1992

Rate Regulation

MM Docket No. 92-266
FCC No. 93-428

COMMENTS OF THE
CABLE TELEVISION ASSOCIATION OF NEW YORK, INC.,
ON THE THIRD NOTICE OF PROPOSED RULEMAKING

The Cable Television Association of New York, Inc. ("CTANY"), is a trade association representing 127 cable television systems operating in New York State.

In Section IV of its Third Notice of Proposed Rulemaking, the Commission solicits comments concerning the possibility of permitting external cost treatment for costs of upgrades required by local franchising authorities. CTANY supports permitting external treatment of the costs of required upgrades. Unless such costs can be treated as external, many systems that otherwise would elect regulation according to the Commission's benchmark methodology could be forced to choose

cost-of-service regulation.

CTANY asks not only that the Commission permit external treatment of the costs of required upgrades but also that it state clearly that its rule allowing such treatment applies whether the required upgrade is mandated by a municipality or by a state.

In New York State "no [cable company] shall exercise a franchise, and no such franchise shall be effective, until the [New York State Commission on Cable Television ("NYSCCT")] has confirmed such franchise." New York Executive Law section 821(1). New York law further provides that "[t]he [NYSCCT] may issue a certificate of confirmation contingent upon compliance with standards, terms or conditions set by the [NYSCCT]". New York Executive Law section 821(4). In many cases the NYSCCT has issued certificates of confirmation contingent on the cable company upgrading its system to a certain capacity (usually 450 or 550 MHz). It has done so by stating in the certificates of confirmation that completion of the prescribed upgrade by a specified date "is an express and material condition of our approval herein".

The identity of the governmental authority that mandates an upgrade as a franchise requirement should not determine whether the cable operator is permitted to extend external treatment to the costs that inescapably flow from the

requirement. The critical factor is the requirement -- not who imposes it. We therefore ask the Commission to use this rulemaking to establish broadly and clearly that, if an upgrade is performed pursuant to a governmental mandate, the cost is eligible for external treatment.

Respectfully submitted,

Cable Television Association of New
York, Inc.

Richard F. Alteri
President

By: 
Charles B. Stockdale
Counsel

126 State Street
Albany, NY 12207
(518) 463-6676

Date: September 29, 1993